



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-4835

MEMORANDUM

DATE: November 7, 2013

TO: Circuit and District Judges
cc Circuit Court Administrators
District Court Administrators
County Clerks
Case Management System Vendors

FROM: Bobbi Morrow
Management Analyst

RE: Disposition of Multi-Count Criminal Complaints

During time guidelines subgroup meetings, several of the judges expressed concern that the delay between the time of entering a plea agreement in a criminal case on the record and sentencing could result in the case extending outside the time guidelines.

For caseload reporting, a criminal case is considered disposed and the case age clock stops when all counts in the case are adjudicated. Several plea agreement scenarios involve dismissal of one or more counts in exchange for a plea of guilty/no contest on another count or counts. The dismissal of counts is memorialized by the filing of a dismissal or nolle prosequi by the prosecutor. However, sometimes this does not occur until the time of sentencing. Two examples of plea agreement scenarios are:

- A plea of guilty/no contest to an added Count II and dismissal of Count I at sentencing
- A plea of guilty/no contest to Count I and dismissal of remaining count(s) at sentencing

If the prosecutor makes an oral motion to nolle prosequi the case and the motion is granted, the court should enter the adjudication of all counts at the time the plea agreement is accepted and placed on the record, even though the prosecutor may not file the written dismissal or nolle prosequi until sentencing. If the defendant withdraws his/her plea prior to sentencing, the court can set aside the dismissal, reinstate the original counts, and proceed with the case.

We have modified both the caseload reporting instructions and the Q & As on caseload reporting to clarify this. Added text is indicated with underlining; deleted text is shown by ~~striketrough~~.

Circuit Court

**Caseload Reporting Instructions – Circuit Court Caseload – Part 2: Method of Disposition
Section B: Criminal – Method of Disposition**

Line 4: Nolle Prosequi (*form MC 263*)[*MCR 6.110(F) and (H), 6.427*]

Count when the prosecutor motions the court, in writing or on the record, to nolle prosequi the case and the motion is granted. ~~nolle prosequi is entered.~~

Q & A Dispositions: Criminal

Dismissal

Q. If a prosecutor motions the court, in writing or on the record, to nolle prosequi the case and, the case is then dismissed, is this disposition counted as a “Dismissal by Court” or a “Nolle Prosequi”?

A. The case should be reported under disposition “Nolle Prosequi” when the prosecutor makes the motion, in writing or on the record, to nolle prosequi the case and the motion is granted. ~~but only after the order is entered.~~

Prosecutor Dismissal

Q. What if the prosecutor fails to send the nolle prosequi order after the time ~~a period of time~~, he/she having indicated it he/she would be filed ~~the document~~?

A. The court should wait for the order before closing ~~disposing of~~ the case. However, if general practice is that the document is never filed, the court may close ~~dispose of~~ the case based upon the prior dispositional entry in the register of actions ~~entry~~, after properly notifying the Michigan State Police Criminal Justice Information Center of the disposition as required under MCL 769.16a.

District Court

**Caseload Reporting Instructions – District Court Caseload – Part 2: Method of Disposition
Section A: Criminal – Method of Disposition**

Line 5: Nolle Prosequi Dismissed by Party (form MC 263) [MCR 6.110(F), (H), 6.427, 6.931, MCL 764.9d]

Count when the prosecutor or city attorney motions the court, in writing or on the record, to nolle prosequi the case and the motion is granted.~~an order is entered after the prosecutor or city attorney motion for a dismissal at any point in the proceedings or when a nolle prosequi is filed~~ Do not count a dismissal to allow the filing of a second complaint for a lesser included offense or for enhancement.

Q & A Dispositions: Criminal and Traffic

Dismissal

Q. If a prosecutor motions the court, in writing or on the record, to nolle prosequi the case; and the case is then dismissed, is this disposition counted as a “Dismissal by Court” or a “Nolle Prosequi”?

A. The case should be reported under disposition “Nolle Prosequi” when the prosecutor or city attorney makes the motion, in writing or on the record, to nolle prosequi the case and the motion is granted. ~~but only after the order is entered.~~

Plea Bargain

Q. How would a matter involving multiple charges resulting in a plea bargain to one or more counts and a nolle prosequi for one or more counts be reported as disposed?

A. The matter would be reported disposed by "Guilty Plea" because it is a higher form of disposition than “Nolle Prosequi”~~“Dismissed by Party”~~ in the hierarchy of dispositions.

Prosecutor Dismissal

Q. What if the prosecutor fails to send the nolle prosequi order after the time a period of time, ~~he/she having indicated it he/she would be filed~~the document?

A. The court should wait for the order before closing ~~disposing of~~ the case. However, if general practice is that the document is never filed, the court may close ~~dispose of~~ the case based upon the prior dispositional entry in the register of actions~~entry~~, after properly notifying the Michigan State Police Criminal Justice Information Center of the disposition as required under MCL 769.16a.

If you have any questions, please feel free to contact me at morrowb@courts.mi.gov or 517-373-2173 or Laura Hutzell at hutzell@courts.mi.gov or 517-373-5569.